

APPEAL NO. 023050  
FILED JANUARY 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 12, 2002. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and that the claimant did not have disability. The appellant/cross-respondent (carrier) appealed the hearing officer's determination that the claimant had sustained a compensable injury and the claimant cross-appealed the hearing officer's disability determination. The carrier responded that the claimant did not file a timely appeal and urged affirmance of the hearing officer's disability determination. The claimant responded, urging affirmance of the hearing officer's injury determination.

DECISION

Affirmed.

The parties stipulated that the claimant was involved in a motor vehicle accident on \_\_\_\_\_, while in the course and scope of employment. The claimant testified that he injured his back in the accident and thereafter he developed severe headaches and pain to his neck and left leg. The claimant testified that he had a prior back injury in 1995 and that he had back surgery in 1995 and 1997. The claimant testified that he was diagnosed with a cyst in his brain and had surgery to remove the cyst on April 1, 2002. The claimant testified that he continued to work after his accident on \_\_\_\_\_, until the date of his cyst removal surgery on April 1, 2002. The claimant testified that he was taken off work due to his cyst removal surgery and was released to work on July 17, 2002. The parties stipulated that the claimant resigned his employment position with the employer and accepted employment at an equal or greater salary, beginning employment on July 17, 2002.

The hearing officer determined that the claimant sustained a compensable cervical and lumbar sprain/strain. The questions of whether the claimant sustained a compensable injury and whether he had disability presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence. The hearing officer found that the claimant sustained a compensable injury but did not have disability. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain,

709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

Regarding the carrier's argument that the claimant's cross-appeal is untimely, we disagree. Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on November 26, 2002. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the hearing officer's decision is deemed to have been received by the claimant five days after the date the decision was mailed by the Commission. A written request for review must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in the Texas Government Code. Section 410.202(a) and (d). With the decision mailed to the claimant on November 26, 2002, the claimant is deemed to have received the decision on December 1, 2002. We note that November 28 and 29, 2002, are holidays listed in the Texas Government Code, however Section 410.202(a) does not apply to extend the five-day period for deemed receipt of the decision. Section Rule 143.3 (c) provides that a request for review shall be presumed to be timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely filed. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994. Applying the exclusions set fourth in Section 410.202(a), the last date for the claimant to timely file an appeal was December 20, 2002. The appeal was faxed to the Commission's Chief Clerk of Proceedings on December 20, 2002. Therefore, the claimant's appeal is timely, and we reject the carrier's argument that it was untimely.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY F/K/A TEXAS WORKERS' COMPENSATION INSURANCE FUND** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Susan M. Kelley  
Appeals Judge